IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of:
SCHRIER *et al.*
Appl. No. 09/807,512
§ 371 Date: April 8, 2002
For: **Camel, An Alternative Translation Product of the Tumor Antigen Lage-1**

Confirmation No. 9121
Art Unit: 1642
Examiner: Davis, M.T.
Atty. Docket: 0652.2200000/EKS/Y-W

Reply To Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated **February 11, 2003**, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I , represented by claims 15 and 34. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made with traverse. Applicants assert that the restriction of the present groups is improper under PCT Rules 13.1 and 13.2. At page 3 of the Office Action, the Examiner contends that the claims in Groups 1-29 do not relate to a single inventive concept under PCT Rule 13.1 because they lack the same or corresponding technical features as required under PCT Rule 13.2. In making this contention, the Examiner states that "[a] national stage application shall relate to one invention only or to a group of inventions so

linked as to form a general inventive concept. When claims to different categories are present in the application, the claims will be considered to have a unity of invention if the claims are drawn only to one of the following combinations of categories" as set out in 37 C.F.R. 1.475(b).

Applicants respectfully traverse this contention and assert that the application relates to the CAMEL polypeptide of SEQ ID NO:2, fragments thereof, polynucleotides which encode said polypeptides, and to methods of administering to or treating an individual with said polypeptides and polynucleotides. Thus, the inventions are linked by the general inventive concept of the CAMEL polypeptide and a method of use of said polypeptide.

In addition, the Examiner states that "Groups 2-12 are not linked to the single general inventive concept of Group 1, because they are additional products which do not share the same structure with the polypeptide of SEQ ID NO: 2 of group 1." (Paper No. 11, page 4). Applicants respectfully traverse. The polypeptides of Groups 2-6 are merely fragments of the full length CAMEL polypeptide of SEQ ID NO:2. The unity of invention concept of PCT Rule 13.1 allows for "a group of inventions so linked as to form a single ***general*** inventive concept." (emphasis added). There is no requirement for polypeptides in a single group to share the same structure. The polypeptides of SEQ ID Nos: 11, 12, 24, 25 and 26 are fragments of the full length CAMEL polypeptide of SEQ ID NO:2 and thus possess a technical relationship since they are fragments of the same protein and share a common sequence.

Furthermore, the polynucleotides of Groups 7-12 encode the polypeptides of SEQ ID Nos: 2, 11, 12, 24, 25 and 26, thus sharing a common technical feature since they encode for either the full length CAMEL polypeptide of SEQ ID NO:2 or fragments thereof.

Applicants point out that claim 22, which the Examiner has placed in Groups 2-6 is not directed to a CTL epitope comprising the amino acid sequence of SEQ ID Nos: 11, 12, 24, 25 or 26 as is stated on page 2 of Paper No. 11. Rather, claim 22 is directed to a composition comprising the polypeptide of claim 15 (SEQ ID NO:2). Thus, applicants request that this claim be rejoined with the claims of Group I, as the composition claim shares a common technical feature with the claims of Group I.

The Examiner also states that "Group 18 is an additional use claimed for the polypeptide of SEQ ID NO:2 of Group 1." (Paper No. 11, page 4). Applicants assert that the method of claim 36 shares a special technical feature with the method of claim 34, of Group 1, which is inducing a CTL response using the polypeptide of SEQ ID NO:2. Further, the method claim comprising Group 18 depends from and includes all the limitations of the product claim of Group I. In light of the decisions in *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ 2d 1663 (Fed. Cir. 1996), a notice was published in the Official Gazette which set forth new guidelines for the treatment of product and process claims. See 1184 OG 86 (March 26, 1996). Specifically, the notice states that: in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

Finally, the Examiner contends that Groups 13-17 and 19-23 are not linked to Group 1, "because they are additional methods which do not recite the use of the polypeptide of

SEQ ID NO:2 of group 1." (Paper No. 11, page 4). Applicants reiterate from above that the polypeptides of SEQ ID Nos: 11, 12, 24, 25 and 26 are fragments of the CAMEL polypeptide of SEQ ID NO:2. Thus, treating an individual comprising said fragments of the CAMEL polypeptide of SEQ ID NO:2 are linked by a single general inventive concept, since SEQ ID Nos: 11, 12, 24, 25 and 26 are merely fragments of the CAMEL protein.

Applicants also note that the Examiner has not commented on why the claims of Groups 24 and 25-29 do not form a single general inventive concept with the claims of Group 1.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Eric K. Steffe
Attorney for Applicants
Registration No. 36,688

Date: 7/11/05

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600